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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

ROBERT D., Petitioner, v. THE SUPERIOR COURT OF MADERA COUNTY, Respondent; MADERA COUNTY DEPARTMENT OF PUBLIC WELFARE, Real Party in Interest.	F045454 (Super. Ct. Nos. BJP014616-01, BJP014616-02) **OPINION**

THE COURT[*]

ORIGINAL PROCEEDING; petition for extraordinary writ review.

Bonita A. Alonso, for Petitioner.

No appearance for Respondent.

David A. Prentice, County Counsel, and William G. Smith, Deputy County Counsel, for Real Party in Interest.

[*]Before Harris, Acting P.J., Cornell, J., and Dawson, J.

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Petitioner seeks extraordinary writ review (Welf. & Inst. Code,[1] § 366.26, subd. (*l*); Cal. Rules of Court, rule 39.1B) from respondent court's status review order that a section 366.26 hearing be held August 30, 2004, as to his two daughters, ages 9 and 16. Petitioner lost custody of the children after he allowed his younger daughter, R.D., access to pornographic material and he used methamphetamine to the point that he could not provide and care for his daughters. More than a year after the start of reunification services, social workers heard from another child that at the time petitioner exposed R.D. to pornography he also sexually molested her. While petitioner denied any such abuse, R.D. eventually confirmed the other child's report. Citing the fact that social workers did not offer him sexual abuse counseling, petitioner contends the court erred at the status review hearing: by finding that real party in interest, Madera County Department of Public Welfare (department), provided him reasonable services; and in the alternative, by denying him additional reunification services. On review, we conclude the court did not err.

PROCEDURAL AND FACTUAL HISTORY

On November 4, 2002, the department investigated a report that petitioner allowed and engaged his daughters in watching pornographic movies with him. At the time, petitioner and his daughters lived at the B & Z Motel. When confronted by a department social worker about the report, petitioner appeared disoriented and did not respond. The social worker suspected that petitioner was a substance abuser. He, however, denied any drug abuse. Meanwhile, 8-year-old R.D. admitted to the worker that she watched people having sex on television. She added that her father did not get mad at her but turned it off sometimes. The following day, petitioner admitted to the social worker that he had a

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1 All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

drug problem, particularly with methamphetamine, and he knew it made him unable to care and provide for his children.

At a juvenile detention hearing on November 7, 2002, petitioner submitted to dependency court jurisdiction under section 300, subdivision (b) on grounds that he allowed R.D. access to pornographic material and did not intervene to protect her from such exposure, and that his methamphetamine use interfered with his ability to provide and care for his daughters. The court subsequently adjudged the girls dependent children, removed them from parental custody and ordered reunification services for petitioner and the children's mother.[2] Those services included a mental health assessment and any recommended treatment, such as anger management classes, parenting classes, substance abuse counseling, random drug tests, and participation in Narcotics Anonymous (NA).

During the first six months of services, petitioner made little effort to reunify. The court, at a June 2003 review hearing, found that despite the department's provision of reasonable services, there remained a substantial risk of detriment. The court continued services for another six months.

During the second six months, petitioner attended and completed parenting classes and an anger management course. He also commenced an outpatient substance abuse program, drug-tested, and participated in some NA meetings.

Then, on November 13, 2003, a little more than a year after the court exercised its jurisdiction over petitioner's daughters, M.H., another girl in the department's protective custody, accused petitioner of sexual abuse. Specifically, M.H. reported she and petitioner's younger daughter, R.D., had watched pornographic videos with petitioner

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[2] The mother and petitioner, who had an explosive relationship, were in the process of dissolving their marriage. The mother, who also had a troubled relationship with the couple's older daughter, had left the children with petitioner.

when he lived at the B & Z Motel with his daughters. M.H. further stated that petitioner asked her and R.D. to insert a dildo in his rectum. When they both declined, M.H. alleged she saw petitioner "touching" his daughter.

Within days, a department social worker interviewed both petitioner and R.D. Although they gave conflicting stories of what had happened, both petitioner and R.D. denied that petitioner asked the girls to insert a dildo in his rectum and that petitioner inappropriately touched his daughter.

The department reported this new information in its status review report for a 12-month review hearing calendared for early December 2003. Although the department acknowledged the father made substantial progress with its case plan, it recommended that the court not return the children and terminate services based on the recent child molestation allegation. The department also cited petitioner's failure to provide proof that he was currently attending NA meetings. Further, the department noted petitioner, after moving during the preceding six months to Riverside County, was planning to move to another part of the state ostensibly to work in construction. The department questioned the wisdom of the move because Riverside County was about to experience a need for construction workers due to recent wildfires that destroyed so many homes.[3]

On the originally calendared hearing date, petitioner's attorney objected to the department's report and requested a contested hearing. The court continued the matter until late December at which time petitioner's attorney requested another continuance. Counsel wanted the department to make available the social worker who interviewed M.H. as well as the social worker who prepared the status review report. The court granted counsel's motion and continued the matter until late January when it granted yet another continuance at the mother's request.

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[3] According to later evidence, petitioner did in fact move to Northern California in December 2003.

On February 19, days prior to the continued hearing date, the department filed an addendum report detailing more information about the alleged sexual molestation. First, in mid-December 2003, R.D. disclosed more about what had happened in October 2002 at the B & Z Motel. Petitioner had provided her and her friend, M.H., with cigarettes which they smoked while the three of them watched a pornographic video. At some point, petitioner did ask the girls to insert a dildo in his rectum and R.D. declined to do so. The child stated she did not want to get her father in trouble.

During another interview by social workers, M.H. stated not only did petitioner ask to have a dildo inserted in his rectum, he placed oil on the dildo he had. According to M.H., R.D. did insert the dildo into petitioner's rectum.

Last, the addendum report disclosed a third interview of R.D. in late January 2004. During that interview, she stated that she did in fact insert the dildo into her father's rectum.

In late February 2004, at the next continued hearing date, petitioner's counsel requested yet another continuance to mid-March in order to review the addendum report with petitioner. The court granted counsel's request.

Eventually, the court conducted the status review hearing on April 2 and May 3, 2004. The department submitted the matter on its status review report prepared for the original December 2, 2003 hearing date and the addendum report of February 19, 2004. Petitioner's counsel called a number of witnesses. Much of the testimony related to the molestation investigation. Relevant to this writ proceeding, petitioner's counsel cross-examined the family's social worker, John Gomez, who prepared the status review report and addendum. Gomez testified he did not conduct the investigation; rather, an emergency response worker did. Gomez did attend the November 19, 2003, interview of petitioner when he denied any molestation. In response to the question, "did you offer [petitioner] sexual abuse counseling," Gomez replied,

> "He had denied that anything had occurred, so . . . he wouldn't be able to go into counseling without first understanding and admitting to the incident."

He later elaborated that he never offered petitioner sexual abuse counseling because:

> "when we confronted him with the allegations he was adamant that this did not happen. It could not have happened and that this was false and inaccurate. . . . And knowing how our counseling and therapist work, without his – if he felt that it didn't happen, there was no way to get any kind of counseling to work on that."

He added petitioner never admitted the molestation.

In closing argument, petitioner's counsel questioned the accuracy of the molestation allegation. Alternatively, counsel argued petitioner had not received reasonable services to address the molestation.

In announcing its decision to terminate services and set a section 366.26 hearing, the court expressly found the molestation allegation true. That coupled with petitioner's long history of substance abuse, limited track record of negative drug tests, his move to Southern California and then to Northern California, and lack of stability, led the court to find a substantial risk of detriment warranted the children's out-of-home placement. The court further determined petitioner received reasonable services under the circumstances.

DISCUSSION

Petitioner does not contest the court's findings that: he sexually molested his daughter in October 2002; and continued removal of the children was warranted. Instead, citing the testimony that the social worker never offered him sexual abuse counseling, petitioner contends there was insufficient evidence to support the court's reasonable services finding. Under the circumstances of this case, we disagree.

First, our dependency law entitled petitioner to 12 months of reasonable reunification services (§ 361.5, subd. (a)(1)) which he undisputably received.[4] As previously noted, it was literally days after the 12 months ran that the sexual molestation first came to light.

Second, the factual question of whether that molestation had occurred was not resolved for another six months, at which point only four days of the 18-month maximum for reunification services (§ 361.5, (a)) remained. The investigation took some time -- given not only petitioner's outright denial but also R.D.'s initial denial that any abuse had occurred. The department did not act unreasonably in this respect. Further, the court granted requests for a total of five continuances -- three of which were initiated by petitioner. It appears from our reading of the record that petitioner made a tactical decision to challenge the molestation allegations in the hopes the court either would refuse to consider the department's new evidence or would not be persuaded by it. He did so at his own risk, not only that the court could find the allegations true, but that virtually no time to reunify might remain.

Third, by his argument, petitioner appears to assume that until the court resolved the allegations, the time for reunification services would somehow toll. However, neither does he cite nor does our research reveal any authority for such an assumption.

The social worker arguably should have explained to petitioner that sexual abuse counseling was an available service but would require his acknowledgement of his wrongdoing. However, we note petitioner never took the stand or otherwise offered evidence that the lack of such information prejudicially influenced his subsequent actions, including his continued denial of any abuse. More to the point, given

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[4] For a child over age three, "court-ordered services shall not exceed a period of 12 months from the date the child entered foster care" (§ 361.5, subd. (a)(1)) which in this case was November 7, 2002, when the court exercised its dependency jurisdiction.

petitioner's continued denial, it is at least arguable that such an explanation would have been an idle act which, as the department notes, the law does not require. (*Leticia V. v. Superior Court* (2000) 81 Cal.App.4th 1009, 1016.) Finally, in this regard, the absence of such an explanation did not undermine the court's reasonable services finding.

Last, we also reject petitioner's alternative argument that the court should have exercised its discretion and extended further services given his substantial compliance with his original caseplan. First, we observe petitioner never requested such an exercise of discretion and therefore arguably has forfeited this argument on review. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1339.) Second, as noted above, our dependency law sets a maximum limit of 18 months from the date a child enters foster care for reunification services. (§ 361.5, subd. (a).) In this case, only four days of those 18 months remained, hardly time -- assuming petitioner's admission of wrongdoing -- for a counseling referral, let alone actual sexual abuse counseling. Third, to the extent juvenile courts may extend services in very limited circumstances past the 18-month mark (*Carolyn R. v. Superior Court* (1995) 41 Cal.App.4th 159, 167), we fail to see how appellant qualified for such discretion.

DISPOSITION

The petition herein is denied.